IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
	)	
	)	
v.	)	**CRIMINAL ACTION**
	)	**NO. 10-534-3**
	)	
NATHANIEL TWIGGS,	)	
	)	
Defendant.	)	

MOTION TO SUPPRESS EVIDENCE
FINDINGS OF FACT AND CONCLUSIONS OF LAW

RUFE, J. **February 17, 2011**

The United States charges Defendant Nathaniel Twiggs ("Defendant"), along with Anthony Taylor and Ronald Bell, with: (1) one count of conspiracy to distribute cocaine base ("crack cocaine") in violation of 21 U.S.C. § 846; (2) one count of possession with the intent to distribute crack cocaine and aiding and abetting in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and § 2; (3) one count of distribution of crack cocaine and aiding and abetting in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A) and § 2; and (4) one count of possession of a firearm in furtherance of a drug trafficking crime and aiding and abetting in violation of 18 U.S.C. § 924(c) and § 2.[1] Defendant has filed Motions to Suppress Physical Evidence and Statements [Doc. Nos. 30, 31 & 50], seeking the suppression of physical evidence obtained on May 27, 2010 during a warrantless entry into a residence located at 1507 N. 29th Street, and a subsequent incriminating statement made by Defendant on August 19, 2010. Defendant also filed a Motion for Severance

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[1] Anthony Taylor was also charged with being a convicted felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1).

and Relief from Prejudicial Joinder [Doc. No. 32], which is now moot.[2] Upon consideration of Defendant's Motions to Suppress Physical Evidence and Statements, the Government's Omnibus Response thereto [Doc. No. 38], testimony presented at an evidentiary hearing and oral argument thereon, and upon further review of the January 10, 2011 hearing transcript, the Court now enters its findings of fact and conclusions of law.

FINDINGS OF FACT

1. On or about April 2010, ATF Special Agent Ryan Kovach was assigned to a narcotics investigation involving Anthony Taylor. The investigation was based on information provided by Jose Fernandez ("Fernandez"), a cooperator who lived at 1507 N. 29th Street, Philadelphia, Pennsylvania. Fernandez informed the ATF about crack cocaine dealings originating from both his residence and the residence adjacent to it: 1509 N. 29th Street.[3]

2. The residence at 1507 N. 29th Street is a three-story row house. Its front door enters directly into a vestibule about six or seven feet in length, which then leads to two interior doors: a left door which opens to the first floor, and a right door which leads to the second and third floors.[4]

3. Fernandez told the ATF that Taylor lived at 1507 N. 29th Street, possessed firearms, and stored large amounts of crack cocaine within the residence. Through Taylor's workers, small amounts of the crack were continually transferred from 1507 N. 29th Street to 1509 N. 29th Street, which was an abandoned residence. The drugs were then sold from the abandoned location.[5]

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[2] Ronald Bell and Anthony Taylor have entered guilty pleas in this case. See Doc. Nos. 79 and 83. Consequently, the severance motion is moot. See Doc. No. 55.

[3] United States v. Twiggs, No. 10-534-3, Suppression Hr'g Tr., Jan. 10, 2011 ("Tr.") at 7:17-8:10, 18:13-17, 19:5-19, 28:5-8 (testimony of Special Agent Ryan Kovach).

[4] Id. at 46:12-25, 63:17-25 (testimony of Sergeant Charles Kapusniak); 69:9-19 (testimony of Officer Joseph McCauley); Gov't Ex. 3. It is somewhat unclear from the testimony of the officers whether there was one or two interior doors. The Court will assume two doors for its purposes; regardless, the testimony is clear that the officers entered an interior door to reach the upper levels of the residence.

[5] Tr. at 8:13-9:6 (testimony of Agent Kovach).

4. Upon receiving the information from Fernandez, in April 2010, Agent Kovach and his partner ran a background check on Taylor and conducted a physical surveillance of the specified residences. All information gathered was then relayed to Sergeant Charles Kapusniak of the Philadelphia Police Department, Narcotics Drug Force Unit, who in turn passed the information on to a squad unit within the department. The squad performed surveillance for the same residences and observed narcotics activity, with no arrests made at the time.[6]

5. On May 27, 2010, at approximately 6:30 p.m., Sergeant Kapusniak assembled a narcotics strike force surveillance team for the 1500 block of N. 29th Street. The Sergeant and his partner were dressed in plain clothes conducting surveillance from an unmarked police vehicle at the corner of N. 29th and Jefferson Streets, approximately fifty to sixty feet from the target locations identified by Fernandez. The officers had an unobstructed view of all activity occurring within the vicinity, and they communicated via police radio to uniformed police back-up who were nearby in marked bicycles and vehicles.[7]

6. At approximately 6:35 p.m., Sergeant Kapusniak observed a male, later identified as Ronald Bell, exiting 1507 N. 29th Street, entering 1509 N. 29th Street, and then exiting and standing in front of 1509 N. 29th Street. Between approximately 6:45 p.m. and 7:00 p.m., the Sergeant saw Bell engage in three hand-to-hand drug transactions. Each time, Bell and a customer had a short conversation, at which point the customer gave Bell an undetermined amount of money. Bell then entered 1509 N. 29th Street for approximately thirty seconds, returned to the customer outside, and completed the drug transaction. As each customer left the area, Sergeant Kapusniak gave a physical and clothing description of the customer to the back-up officers, who stopped the perpetrators a short distance away, and recovered from each multiple packets containing alleged crack cocaine. This information was relayed back to the Sergeant to confirm a positive drug transaction and consistency with ATF intelligence.[8]

7. At approximately 7:05 p.m., Bell walked to the southeast corner of 29th and Jefferson Streets, and entered a corner store. Sergeant Kapusniak radioed his uniformed bike officers to arrest Bell inside the store. Officer Joseph McCauley made the arrest. A cell phone was later recovered from Bell's person, which had not been observed at any point prior to the arrest. After the arrest, the Sergeant directed his uniformed officers to secure

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[6] Id. at 9:7-10:7 (testimony of Agent Kovach); 29:21-30:2, 31:11-32:14 (testimony of Sergeant Kapusniak).

[7] Id. at 32:2-4, 32:15-22, 33:22-34:19, 38:24-39:7, 42:19-24 (testimony of Sergeant Kapusniak).

[8] Id. at 32:23-33:21, 34:20-37:2, 37:12-38:7, 40:1-4, 59:6-21(testimony of Sergeant Kapusniak); 68:6-15 (testimony of Officer McCauley).

the front and rear of the 1507 and 1509 N. 29th Street properties until he obtained a search warrant.[9]

8. McCauley was assigned to secure 1507 N. 29th Street. He and other officers approached the residence and announced themselves as the police. McCauley then entered the vestibule through an unlocked front door, and heard scurrying noises from the upper levels of the household, which he believed to be persons attempting to flee the premises. He continued to identify himself as "police," forcibly entered through the right interior door leading to the upper floors, and still hearing the noises, ran up the staircase to find its source. When the officer reached the bottom of the steps leading to the third floor, he saw the Defendant standing in front of an open window on the third floor, next to an open-lidded trash can. Defendant was lifting a pile of trash out of the can with his left hand and shoving money and drugs into the can with his right hand, in an attempt to conceal the items by placing the trash over them. After McCauley ascended the steps, he was able to see the money and drugs in plain view within the trash can. McCauley then detained, handcuffed, and patted-down Defendant, and informed the other officers via police radio of the events. The officers later recovered $389 and a large Ziplock bag of loose chunks of crack cocaine from the trash can, and a cell phone from Defendant's person.[10]

9. McCauley also noticed that another male, later identified as Taylor, fled the scene through the third floor window. Once additional officers arrived and secured Defendant, McCauley and the Sergeant climbed out of the window, which led to the second floor roof, in pursuit of Taylor. Soon thereafter, they found and arrested Taylor on a house rooftop several doors down from 1507 N. 29th Street. The officers later recovered $183 and a cell phone from his person.[11]

10. Defendant, Taylor, and Bell were detained in the back of the police vehicles. The officers then began securing the properties, preparing arrest and search warrant paperwork, and transporting the detainees. In the process of securing 1507 N. 29th Street, various officers recovered substantial amounts of crack, money, and a forty caliber Glock from the backyard of the property, all of which were in plain view. These items belonged to Taylor, and he discarded them as he escaped from the third floor window. Within the

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[9] Id. at 37:3-11, 38:8-13, 39:8-14, 42:15-18, 60:2-19 (testimony of Sergeant Kapusniak); 67:8-68:3, 68:17-69:3, 69:20-22 (testimony of Officer McCauley).

[10] Id. at 44:11-23, 45:24-46:1, 48:4-13 (testimony of Sergeant Kapusniak); 69:4-8, 69:23-73:7, 74:14-16, 75:6-76:17, 77:5-84:19, 85:9-87:5 (testimony of Officer McCauley); Gov't Exs. 3-4.

[11] Tr. at 44:24-45:1, 48:14-50:10 (testimony of Sergeant Kapusniak); 73:8-74:8 (testimony of Officer McCauley); Gov't Ex. 5.

household, the Sergeant observed in plain view drug and drug paraphernalia in the second floor front and middle rooms, all of which were visible through open doors.[12]

11. At approximately 3:14 a.m., the police executed a search warrant at 1507 N. 29th Street. Recovered from the second floor front and middle rooms were crack cocaine, drug paraphernalia, and real and counterfeit money. The search also revealed indicia of residence for Taylor inside the front room. At approximately 3:25 a.m., the police executed a search warrant at 1509 N. 29th Street. Recovered from the property were crack cocaine, drug paraphernalia, and a municipal court notice in Bell's name.[13]

12. On August 17, 2010, a federal grand jury indicted Defendant, Taylor, and Bell based on the investigation, surveillance, and searches on May 27, 2010. Defendant was then being held in state custody at the Philadelphia Correctional Institution due to a federal detainer lodged against him for the federal charges.[14]

13. On August 19, 2010 at approximately 10:15 a.m., Agent Kovach and Special Agent Patrick Henning arrived at the prison in an unmarked vehicle to transfer Defendant into federal custody. Defendant was to be transported to the U.S. Marshal's office within the James A. Byrne Federal Courthouse, 601 Market Street, Philadelphia, PA 19106 for his initial appearance on the federal indictment. Per law enforcement policy regarding the transportation of defendants, before entering the vehicle, Defendant was restrained by a belly chain (hand cuffed from the front) and leg cuffs. Defendant was placed in the right rear seat and buckled in. Agent Kovach sat directly next to Defendant, in the left rear seat, and Agent Henning operated the vehicle.[15]

14. While in transit, Agent Kovach explained to Defendant that he was being transferred into federal custody, which Defendant understood. The Agent then asked Defendant if he would be willing to answer questions; Defendant agreed. Consequently, Agent Kovach read Defendant his *Miranda* rights from a *Miranda* card. Defendant stated that he understood his rights and was willing to waive them and speak to the Agent. Prior to the questioning, Agent Kovach informed the Defendant, and Defendant understood, that he was free to stop the Agent's questioning at any point if he felt uncomfortable or simply

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[12] Tr. at 51:4-54:5, 64:12-20 (testimony of Sergeant Kapusniak); 74:17-24 (testimony of Officer McCauley); 87:15-88:9, 102:5-7 (stipulation as to Officer Mowsa's testimony regarding evidence discarded by Taylor).

[13] Id. 55:20-57:21 (testimony of Sergeant Kapusniak).

[14] Id. at 10:15-11:22, 21:12-19, 25:12-17 (testimony of Agent Kovach).

[15] Id. at 10:17-19, 11:2-7, 11:23-13:2, 17:19-22, 20:24-21:2, 21:20-22:23, 27:1-3 (testimony of Agent Kovach).

did not want to answer any more questions. Subsequently, Defendant made an incriminating oral statement to the Agents, which was later memorialized by Agent Kovach in a Report of Interview.[16]

15. Defendant admitted that he grew up in the neighborhood with Taylor and was aware of his drug-dealing activities. He also knew that some of the residents at 1507 N. 29th Street were also drug dealers. Defendant was not a resident of the household; rather, he worked for Taylor at the residence, cleaning the kitchen and bathroom. He was paid for these services in crack cocaine. Defendant did not have access to Taylor's bedroom. In general, he described the residence as a boarding house with separate living quarters and a common kitchen and bathroom that the residents shared.[17]

16. The entire back-seat interview lasted about ten minutes, during which time Defendant remained cooperative and exhibited no signs of undue influence, nor did he ask the Agent to stop the questioning.[18]

17. Upon arrival at the courthouse, the U.S. Marshals met the Agents downstairs near the gate of the building, and Defendant was escorted upstairs for processing.[19]

DISCUSSION

Defendant Twiggs presents three arguments in support of his motion to exclude the evidence obtained on May 27, 2010 and his inculpatory statement on August 19, 2010. First, he alleges that his Fourth Amendment rights were violated because police officers entered the 1507 N. 29th Street row house without a warrant, and without exigent circumstances justifying entry. Consequently, all evidence seized from within the house and from Defendant's person—namely

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[16] Id. at 13:3-16:6, 23:21-24:1, 26:2-13, 26:22-25 (testimony of Agent Kovach); Gov't Exs. 1-2.

[17] See Gov't Ex. 2, which Defendant accepts as true. See Tr. at 89:11-93:16, 101:23-102:4.

[18] Tr. at 16:7-19, 17:2-13 (testimony of Agent Kovach).

[19] Id. at 26:14-21 (testimony of Agent Kovach).

drugs, drug paraphernalia, money, and a cell phone—as a result of the illegal entry must be suppressed under the fruit of the poisonous tree doctrine. Next, Defendant asserts that the statement taken from him violated his right to counsel because he was then represented by an attorney in a state proceeding based on the same underlying charges. Finally, Defendant alleges that his interrogation was not preceded by a knowing and intelligent waiver of his *Miranda* rights.

Without the benefit of Defendant's Memorandum of Law in Support of the Motions, the Government provided an Omnibus Response challenging Defendant's standing to contend the warrantless entry into 1507 N. 29th Street, and raised various defenses to Defendant's claims. A motion hearing was then held on January 10, 2011, during which the Defendant agreed that (1) he had no standing to challenge the search of 1509 N. 29th Street, and he was not challenging the admissibility of the items which purportedly belonged to Taylor (the drugs, money, and Glock found in the backyard of 1507 N. 29th Street);[20] (2) the police officers had a right to question Defendant inside the police vehicle;[21] (3) there was no evidence to contradict Agent Kovach's credible testimony that Defendant had been given his *Miranda* warnings prior to questioning;[22] and (4) all state charges were withdrawn prior to the questioning. The Government also conceded that regardless of the outcome on the standing issue for entry into 1507 N. 29th Street, Defendant has standing to challenge the seizure of the cell phone found on his person, and the

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[20] Id. at 102:5-10.

[21] Id. at 95:13-97:8.

[22] Id. at 96:1-4.

money and drugs he was seen with prior to his arrest.[23] After the hearing, Defendant filed his Support Memorandum, narrowing the issues for the Court's consideration to the following: (1) whether the Defendant has standing to challenge the warrantless entry into 1507 N. 29th Street; if affirmative (2) whether the police had exigent circumstances to enter the property without a warrant; and (3) whether the circumstances surrounding the questioning of Defendant were coercive to a degree as to render the inculpatory statement involuntary.[24]

A. Defendant lacks standing to challenge the warrantless entry into 1507 N. 29th Street.

The Fourth Amendment to the U. S. Constitution protects individuals from "unreasonable searches and seizures" of their person or property.[25] The right accorded by the Fourth Amendment is a personal right, and a defendant asserting its protection must first establish standing by showing that he had a legitimate expectation of privacy in the area searched.[26] "To show a legitimate expectation of privacy . . . the person challenging the search has the burden of showing both a subjective expectation of privacy and that the expectation is objectively reasonable, that is, one that society is willing to accept."[27] Factors courts consider include:

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[23] Id. at 88:10-89:5.

[24] Id. at 102:23-103:5.

[25] U.S. Const. amend. IV.

[26] See Minnesota v. Olson, 495 U.S. 91, 95-96 (1990); Warner v. McCunney, 259 F. App'x 476, 477 (3d Cir. 2008).

[27] Warner, 259 F. App'x at 477 (citations omitted); see United States v. Salvucci, 448 U.S. 84, 86-95 (1980).

whether Defendant has a possessory interest in the things seized or places searched; whether he can exclude others from that place; whether he took precautions to maintain his privacy; and whether he had a key to the premises.[28]

Defendant has not met his burden. Defendant does not contend that he was the owner, resident, lessee, or overnight guest of the residence. Nor can he succeed by asserting privacy expectations as a mere short-term guest or casual visitor, since these individuals do not have legitimate expectations of privacy.[29] Defendant alleges only that he was employed to clean the residents' kitchen and bathroom. This allegation, however, does not render any expectations of privacy reasonable. From the limited amount of evidence provided by Defendant, it appears that each time he entered the property, it was for an illegitimate purpose: cleaning in exchange for crack cocaine. Under such circumstances, no reasonable expectation of privacy exists.[30]

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[28] Warner, 259 F. App'x at 477 (citations omitted).

[29] See, e.g., Minnesota v. Carter, 525 U.S. 83, 90 (1998) (noting that "an overnight guest . . . may claim the protection of the Fourth Amendment, but one who is merely present with the consent of the householder may not"); United States v. Perez, 280 F.3d 318, 336-37 (3d Cir. 2002) (same); United States v. Mosley, 454 F.3d 249, 259 (3d Cir. 2006) ("Short-term guests . . . have no expectation of privacy in the house and therefore cannot suppress the fruits of the illegal search."); United States v. Torres, 162 F.3d 6, 10 (1st Cir. 1998) ("Torres was nothing more than a casual visitor in the apartment, and, as such, had no reasonable expectation of privacy."); Terry v. Martin, 120 F.3d 661, 663-64 (7th Cir. 1997) (distinguishing a short-term social guest from an overnight guest, the latter enjoying an assumptively reasonable expectation of privacy); United States v. Huggins, No. 03-091, 2004 WL 2434301, at *1 (D. Del. Oct. 21, 2004) (holding that absent a showing that Defendant is the owner, lessor, or resident, there is no reasonable expectation of privacy).

[30] See Carter, 525 U.S. at 90 (holding no reasonable expectation of privacy where individuals present in home were only present to engage in drug trafficking activity); Perez, 280 F.3d at 338 (holding no reasonable expectation of privacy where there was no evidence that Defendants were at relevant apartment for purposes other than to engage in drug-related activities); United States v. Scott, 673 F. Supp. 2d 331, 339 n. 11 (M.D. Pa. 2009) (stating that the only evidence proffered was that Defendant "used the apartment as a depository for the fruits

Even if this Court were to assume that Defendant was an employee, his privacy expectations would continue to remain unreasonable as he has provided no evidence to support the conclusion that he had either a subjective expectation of privacy in Taylor's residence, or any expectation that society is willing to accept as reasonable. For instance, he has provided no evidence of: a possessory interest in the areas searched or evidence seized (other than from his person); any authorization to invite others onto the property or exclude them from the same; any precautions he may have taken to protect or maintain his privacy within the residence; any special areas or personal space dedicated to him; whether he had a key to the property; how often he visited the residence and how much time he spent there; how often and how long he cleaned the bathroom and kitchen; whether he was authorized to come and go as he pleased; or whether he was authorized to access areas of the house beyond the sections he cleaned. Moreover, the work environment was one of drug dealers, and the areas cleaned were shared among the residents. In general, Defendant cannot have a unique expectation of privacy in areas which are commonly shared by others.[31] Without more, this Court cannot hold that Defendant had a legitimate expectation of privacy within Taylor's home.

Because Defendant has failed to meet his burden to establish standing, the Court need not

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of his robberies" and such evidence is insufficient to establish Defendant's presence within the residence for legitimate purposes); Martin, 120 F.3d at 664 ("Terry was a temporary visitor with no connection to the apartment other than his criminal activities and that, as such, he had no legitimate expectation of privacy in the apartment.").

[31] See United States v. Anderson, 859 F.2d 1171, 1177 (3d Cir. 1988). See also Brannen v. Kings Local Sch. Dist. Bd. of Educ., 761 N.E.2d 84, 91 (Ohio App. 2001) (noting that the "operational realities of the workplace may make some employees' expectations of privacy unreasonable"); Plock v. Bd. of Educ. of Freeport Sch. Dist. No. 145, 545 F. Supp. 2d 755, 757 (N.D. Ill. 2007) (collecting cases).

analyze whether there were exigent circumstances justifying the warrantless entry into 1507 N. 29th Street. Nevertheless, Defendant does have standing to challenge the seizure of the items taken from his person and those placed in the trash can—which Defendant has chosen not to pursue. Even if Defendant chose to challenge the seizure of these items, the challenge would have been without merit under the "plain view" exception to the Fourth Amendment.

The plain view exception allows "officers to seize incriminating evidence in plain view during the course of a lawful search because such a seizure 'does not involve an invasion of privacy.' "[32] There are three requirements that must be met for evidence seized in accordance with the plain view doctrine to be properly be admitted: (1) the officer must not have violated the Fourth Amendment in arriving at the place from which the evidence could be plainly viewed; (2) the incriminating character of the evidence must be immediately apparent; and (3) the officer must have a lawful right of access to the object itself.[33]

Here, all of the elements are met. Officer McCauley did not violate Defendant's Fourth Amendment rights as discussed above. The incriminating character of the evidence was immediately apparent to Officer McCauley, because Defendant was observed attempting to conceal drugs and money inside a trash can, just after Bell was arrested outside the residence for engaging in drug transactions, and the officer heard scurrying noises when he entered the residence. With this observation, the officer had a lawful right of access to the drugs and money. Defendant was subsequently placed under arrest, and the cell phone was discovered during a

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[32] United States v. Menon, 24 F.3d 550, 559 (3d Cir. 1994) (quoting Horton v. California, 496 U.S. 128, 141 (1990)).

[33] Id. (internal quotations and citations omitted).

search incident to arrest. Hence, all such evidence is properly admitted.

B. Defendant's oral statements of August 19, 2010 were voluntary.

This Court rejects Defendant's contention that his statements should be suppressed because he was in a coercive environment, thus violating the Fifth Amendment's bar on the use of incriminating statements that are given involuntarily.[34] "A statement is given voluntarily, if when viewed in the totality of the circumstances, it is the product of an essentially free and unconstrained choice by its maker."[35] The totality of circumstances may include the length, location, continuity, and coercive nature of the interrogation, as well as defendant's maturity, education, physical condition, and mental health.[36] The Government bears the burden of proving by a preponderance of the evidence that Defendant's confession was voluntarily given.[37]

In this case, Defendant challenges only the circumstances of the interrogation: en route to a federal arraignment by two ATF Special Agents while restrained by hand and leg cuffs in the rear of a police vehicle, with his interrogator sitting directly next to him.

It is unsurprising that Defendant, charged for felony offenses, was transported by Agents, placed in hand and leg restraints, and seated next to one of the Agents. "These are quintessential trappings of custody recognized as inherently coercive by *Miranda* and subsequent cases."[38] But,

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[34] See Lam v. Kelchner, 304 F.3d 256, 264 (3d Cir. 2002).

[35] United States v. Jacobs, 431 F.3d 99, 108 (3d Cir. 2005) (citations omitted).

[36] United States v. Swint, 15 F.3d 286, 289 (3d Cir. 1994).

[37] See Lego v. Twomey, 404 U.S. 477, 487-89 (1972); Jacobs, 431 F.3d at 108-09.

[38] United States v. Jackson, 149 F. App'x 69, 72 (3d Cir. 2005).

"as *Miranda* holds, full comprehension of the rights to remain silent and request an attorney are sufficient to dispel whatever coercion is inherent in the interrogation process."[39]

Here, we are faced with basic police procedures when transporting felons and "[s]uch . . . procedures . . . have never been held to constitute sufficient coercion to warrant suppression."[40] Defendant was read, and understood, his *Miranda* rights. He chose to waive them voluntarily. Hence, any inherently coercive environment created by the custodial transport was dispelled by the reading, and Defendant's comprehension, of his *Miranda* rights. The evidence provided by Defendant is insufficient to render his statement involuntary.[41] Beyond the inherently coercive environment, there is no evidence suggestive of coercion. For instance, there is no evidence that the Agents threatened Defendant in any way or used any psychological tactics in an effort to force him to confess. To the contrary, the uncontroverted testimony of Agent Kovach established that Defendant's statements were voluntarily given: there were no signs of undue influence; Defendant remained cooperative during the questioning; and no relief was requested during the

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[39] Moran v. Burbine, 475 U.S. 412, 427 (1986); see also Jackson, 149 F. App'x at 72.

[40] United States v. Cardenas, 410 F.3d 287, 295 (5th Cir. 2005) (citations omitted).

[41] See, e.g., Jackson, 149 F. App'x at 71-72 (holding that a coercive atmosphere was not created when Defendant was *Mirandized*, even though Defendant, after his arrest, was placed on the ground, handcuffed, transported to the magistrate's office by uniformed and armed guards, fingerprinted and photographed at the police station, and remained restrained during his interrogation, where FBI agents allegedly tried to intimidate him); United States v. Hemphill, No. 10-CR-053, 2010 WL 3366137, at **7-8 (S.D. Ohio Aug. 20, 2010) (holding that the combination of failing to warn Defendant of his *Miranda* rights, handcuffing Defendant, and some officers wearing ski masks during the interrogation does not rise to the level of objectively coercive behavior to render Defendant's statements involuntary); United States v. Sylvester, 330 F. App'x 545, 548 (6th Cir. 2009) (holding that Defendant's post-arrest statements to DEA agents were voluntary, even though they were made after Defendant was handcuffed in a holding cell for five hours prior to questioning).

questioning. Furthermore, the interview time was short, lasting approximately ten minutes.

CONCLUSIONS OF LAW

1. Defendant has not met his burden of demonstrating that he had a reasonable expectation of privacy in Taylor's home. Without such an expectation, he does not have standing under the Fourth Amendment to challenge the warrantless entry into 1507 N. 29th Street. Consequently, he cannot seek refuge under the exclusionary rule to suppress evidence discovered during the search of Taylor's residence. All evidence seized from that location, namely, drugs, drug paraphernalia, and money, are properly admitted.

2. Additionally, Defendant does not challenge the admissibility of the items seized from the backyard of 1507 N. 29th Street which purportedly belong to Taylor (money, drugs, and a Glock); items seized from Defendant's person and those placed in the trash can (cell phone, drugs, and money); and items seized from the entry into 1509 N. 29th Street. Hence, all of these items are also properly admitted.

3. Further, the items seized from Defendant's person and those placed in the trash can are properly admitted under the plain view doctrine.

3. Defendant voluntarily provided his incriminating oral statement of August 19, 2010. Defendant was orally informed of his *Miranda* rights. He chose to waive those rights and made an incriminating statement. Any inherently coercive environment due to the confines of being in custody were dispelled by Defendant's comprehension of his *Miranda* rights.

CONCLUSION

For the foregoing reasons, Defendant's Motions to Suppress Physical Evidence and Statements are **DENIED**. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	)	
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	)	
v.	)	**CRIMINAL ACTION**
	)	**NO. 10-534-3**
	)	
NATHANIEL TWIGGS,	)	
	)	
Defendant.	)	

ORDER

AND NOW, this 17th day of February 2011, upon consideration of Defendant's Motions to Suppress Physical Evidence and Statements seeking the suppression of physical evidence obtained on May 27, 2010 during a warrantless entry into 1507 N. 29th Street, and a subsequent incriminating statement made by Defendant on August 19, 2010, the Government's Omnibus Response [Doc. No. 38], testimony presented at an evidentiary hearing and oral argument thereon, and upon further review of the January 10, 2011 hearing transcript, it is hereby

ORDERED that Defendant's Motions to Suppress Physical Evidence and Statements [Doc. Nos. 30, 31 & 50] are **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Cynthia M. Rufe

CYNTHIA M. RUFE, J.